In the

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12572

JOHN D. ROSS,
Sheriff of Santa Barbara County, California,
Appellant

vs.

SYLVESTER MIDDLEBROOKS, JR.,
Appellee.

BRIEF OF THE STATE OF GEORGIA AS AMICUS CURIAE

EUGENE COOK,
Attorney General of Georgia

M. T. BLACKSHEAR, JR.,
Deputy Assistant Attorney
General of Georgia

LAMAR W. SIZEMORE,
Assistant Attorney General of
Georgia

EDWARD E. DORSEY,
Atlanta, Georgia,
Of Counsel.

FILED

SEP 1 9 1950

INDEX

	Page
Interest of the Amicus Curiae	1
Statement of the Case	1
Summary of Position of the Amicus Curiae	3
I. (a) The srope of inquiry on application for habeas corpus to avoid extradition is confined to determination of the folloing questions:	4
(1) Whether a crime has been charged in the demanding state.	
(2) Whether the person in custody is the person so charged.	
(3) Whether such person is a fugitive.	
(4) The correctness of the extradition requisition and warrants.	
(b) The Federal and State courts of the asylum state are without jurisdiction to inquire into matters outside the scope of the questions above stated, and the District Court erred in so doing.	3
II. The court below was without jurisdiction to determine the question of invasion of the constitutional rights of appellee because (a) such allegations do not enlarge the scope of the hearing beyond the traditional limits; (b) the state remedies availabl efor the correction of invasion of constitutional rights have not been exhausted.	3
III. The effect of the decision of the court below, if allowed to stand, would be to cause chaos and confusion in the penal system of all the states of the Union.	4
IV. The decision of the court below is in conflict with the decisions of two of the United States Courts of Appeals.	4
Conclusion	19

TABLE OF AUTHORITIES

Page

Appleyard v. Massachusetts (1906) 203 U. S. 222 ... 9
Biddinger v. Commissioner of Police (1917) 245 U. S. 128 ... 7
Commonwealth of Kentucky v. Dennison 24 How. 66 ... 5
Compton v. Alabama (1909) 214 U. S. 1 ... 8
Drew v. Thaw (1914) 235 U. S. 432 ... 7
Dye v. Johnson (1949) 338 U. S. 865 ... 11
Ex Parte Hawk (1944) 321 U. S. 114 ... 11
Ex Parte Reggel (1885) 114 U. S. 642 ... 8
Hyatt v. New York ex rel. Corkran (1903) 188 U. S. 691 ... 8
In re Strauss (1905) 197 U. S. 324 ... 8
Johnson v. Dye 175 F. 2d 250 ... 11
Johnson v. Matthews (1950) 182 F. 2d 677 ... 8
Lascelles v. Georgia (1893) 148 U. S. 537 ... 13
Lyon v. Harkness 151 F. 2d 731 ... 18
Marbles v. Creecy (1909) 215 U. S. 63 ... 10
Munsey v. Clough (1905) 196 U. S. 364 ... 8
People of State of Illinois ex rel. McNichols v. Pease (1907) 207 U. S. 100 ... 8
Roberts v. Reilly (1885) 116 U. S. 80 ... 8
Wade v. Mayo (1946) 332 U. S. 672 ... 14
White v. Ragen (1944) 324 U. S. 760 ... 12
Whitten v. Tomlinson (1895) 160 U. S. 231 ... 8

Constitutions:
- Constitution of United States:
  - Art. IV, Section 2, Clause 2 ... 10
- Constitution of State of Georgia:
  - Art. I, Section 1, Paragraph 9 ... 12
  - Art. I, Section 1, Paragraph 11 ... 12

Statutes:
- United States Statutes:
  - U. S. Code:
    - Title 28, Section 2254 ... 20
- Georgia Statutes:
  - Georgia Code of 1933:
    - Title 50, Section 50-101 ... 12

Miscellaneous:
- Columbia Law Review, Vol. 47, 470 ... 8
- Parker, "Limiting the Abuse of Habeas Corpus," 8 F.R.D. 171 ... 10
- Stanford Law Review, Vol 2, 174 ... 8

In the

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 12572

JOHN D. ROSS,
Sheriff of Santa Barbara County, California,
Appellant

vs.

SYLVESTER MIDDLEBROOKS, JR.,
Appellee.

BRIEF OF THE STATE OF GEORGIA AS AMICUS CURIAE

INTEREST OF THE AMICUS CURIAE

Appellee Middlebrooks is a fugitive from the justice of Georgia whose return to confinement under sentence was and is sought.

STATEMENT OF THE CASE

Appellee was convicted of the felony of burglary in Georgia and was sentenced to five years' imprisonment; escaped, and eventually was found in the custody of United States military authorities in California. The Governor of Georgia filed requisition for warrant of extradition with the Governor of California, who issued his rendition warrant directed to the appellant herein, John D. Ross, Sheriff of Santa Barbara County. Ross apprehended appellee, who then filed application for the writ of habeas corpus

in the Superior Court of California, which was denied. He filed successive appeals to the Court of Appeals and Supreme Court of California which were denied, and then filed two separate unsuccessful applications for stay of execution of the denial of the writ before individual Justices of the Supreme Court of the United States, both of which applications were denied. Whereupon, appellee filed his application for the writ of habeas corpus in the United States District Court for the Southern District of California, Central Division.

In the proceedings in that court there apparently was no question as to the identity of appellee Middlebrooks as being the person described in the warrant, nor as to the fact that he had been sentenced by a Georgia court and had subsequently escaped confinement; nor were the form and sufficiency of the requisition for extradition nor of the rendition warrant questioned.

The District Court heard evidence on the method of appellee's trial and conviction in Georgia, and on the circumstances of his confinement in Georgia. All evidence on these matters was timely and appropriately objected to by counsel for appellant. The District Court found that the method of trial, and the sentence and punishments of appellee by Georgia constituted denial of due process by the State of Georgia in violation of appellee's constitutional rights; that the action of California in granting Georgia's requisition and arresting respondent likewise constituted violation of appellee's constitutional rights; that appellee had exhausted the remedies provided by the State of California and was not required to exhaust the remedies provided by the State of Georgia, that the Fourteenth

Amendment prevails over other parts of the Constitution or statutes of the United States or of a State.

The State of Georgia made no appearance in the District Court, and adduced no evidence, but did file a legal brief as amicus curiae which was accepted by the trial court (R. 106).

SUMMARY OF POSITION OF THE AMICUS CURIAE

I.

(a) The scope of inquiry on application for habeas corpus to avoid extradition is confined to determination of the following questions:

(1) Whether a crime has been charged in the demanding state.

(2) Whether the person in custody is the person so charged.

(3) Whether such person is a fugitive.

(4) The correctness of the extradition requisition and warrants.

(b) The Federal and State courts of the asylum state are without jurisdiction to inquire into matters outside the scope of the questions above stated, and the District Court erred in so doing.

II.

The court below was without jurisdiction to determine the question of alleged invasion of the constitutional rights of appellee by Georgia because:

(a) Such allegations do not enlarge the scope of the hearing on extradition beyond the traditional limits;

(b) The state remedies available for the correction of invasion of constitutional rights have not been exhausted.

III.

The effect of the decision of the court below, if allowed to stand, would be to cause chaos and confusion in the penal systems of all the states of the Union.

IV.

The decision of the court below is in conflict with the decisions of two of the United States Courts of Appeals.

ARGUMENT AND CITATION OF AUTHORITY

I.

The scope of inquiry on application for habeas corpus to combat extradition is stringently limited, and the Federal and State courts of an asylum state are without jurisdiction to inquire into matters outside such limits.

Appellee's petition for the writ (R. 2) and his own testimony (R. 133, et sequitur) state that he was convicted of the felony of burglary, that he escaped imprisonment (R. 161), and is a fugitive. His petition does not challenge the sufficiency or correctness of Georgia's requisition for extradition nor of California's rendition warrant.

Instead, appellee's case is based on allegations that he was unconstitutionally tried, sentenced, and imprisoned (R. 3 and 4).

The trial court admitted evidence by appellee in-

tended to prove that such trial, sentence, and imprisonment violated respondent's constitutional rights, all such evidence being admitted over the objection of appellant (R. 123) and his motion to dismiss the writ (R. 120).

The basic conflict between appellant and appellee at the trial and now, was that appellee insisted that the District Court could and should hear evidence on and review the legality and constitutionality of his trial and imprisonment, while appellant insisted that the scope of inquiry was stringently limited to the determination of certain specific questions not having to do with the substance of appellee's conviction or sentence, but rather with their occurrence, and proper certification in the extradition papers. The issue was clearly formed (R. 121-122), and the trial court decided it for the prisoner and against appellant.

In essence, the basic question, then, is simply whether the trial court in passing on an attempted extradition may judicially consider and determine the legality of the fugitive's trial and imprisonment, or whether the function of the court is confined to the merely ministerial, mechanical determination of whether the extradition papers are in order, and applicable to the person in custody.

This question was definitively answered in the year 1861 by the Supreme Court of the United States in the case of

> Commonwealth of Kentucky v. Dennison, 24 How. 66,

in which Mr. Chief Justice Taney, speaking for the court, made it clear that the duty of the Governor of an asylum state was purely a ministerial one. Taney

abhorred the possibility that one state might retry and redetermine according to its own laws whether or not the demanded fugitive was guilty of a crime in the demanding state. He said:

> "The argument on behalf of the Governor of Ohio, which insists upon excluding from this clause (the extradition clause of the Constitution) new offences created by a statute of the State, and growing out of its local institutions, and which are not admitted to be offences in the State where the fugitive is found, nor so regarded by the general usage of civilized nations, would render the clause useless for any practical purpose. For where can the line of division be drawn with anything like certainty? Who is to mark it? The Governor of the demanding State would probably draw one line, and the Governor of the other State another. And, if they differed, who is to decide between them? Under such a vague and indefinite construction, the article would not be a bond of peace and union, but a constant source of controversy and irritating discussion. It would have been far better to omit it altogether, and to have left it to the comity of the States, and their own sense of their respective interests, than to have inserted it as conferring a right, and yet defining that right so loosely as to make it a never-failing subject of dispute and ill-will."

The rule which makes extradition a ministerial function has been frequently restated by the Supreme Court from time to time over the years of this country's history without deviation. That court has frequently held that in habeas corpus proceedings brought to combat extradition, the only questions open to inquiry are those

which will determine whether the extradition papers are properly drawn and supported, and whether the proper individual is in custody. For example, in

> Biddinger v. Commissioner of Police, (1917) 245 U. S. 128,

the court said:

> "This much, however, the decisions of this Court make clear: that the proceeding is a summary one to be kept within narrow bounds not less for the protection of the liberty of the citizen than in the public interest; that when the extradition papers required by the statute are in the proper form, the only evidence sanctioned by this Court as admissible on such a hearing is such as tends to prove that the accused was not in the demanding state at the time the crime is alleged to have been committed, and frequently and emphatically that defenses cannot be entertained on such a hearing but must be referred for investigation to the trial of the case in the courts of the demanding State."

And again, in Mr. Justice Holmes' famous opinion in the case of

> Drew v. Thaw (1914), 235 U. S. 432,

it was said:

> "When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a Grand Jury for what it and the Governor of New York allege to be a crime in that State, and the reasonable possibility that it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of habeas corpus upon speculations as to what ought to be the result

> of a trial in the place where the Constitution provides for its taking place. We regard it as too clear for lengthy discussion that Thaw should be delivered up at once."

And, see

> Compton v. Alabama (1909) 214 U. S. 1;
> Ex parte Reggel (1885) 114 U. S. 642;
> In re Strauss (1905) 197 U. S. 324;
> Hyatt v. New York ex rel. Corkran (1903) 188 U. S. 691;
> Roberts v. Reilly (1885) 116 U. S. 80;
> Whitten v. Tomlinson (1895) 160 U. S. 231;
> Munsey v. Clough (1905) 196 U. S. 364;
> People of State of Illinois ex rel.
> McNichols v. Pease (1907) 207 U. S. 100;
> Johnson v. Matthews (1950) 182 F. 2d, 677.

See also *Volume 2, Stanford Law Review*, 174, and 47 *Columbia Law Review*, 470.

Clearly these cases are part of the same pattern which was conceived not by any Justice of the Supreme Court nor by Congress, though it has been stated and implemented by each, but rather by the framers of the Constitution. They foresaw with surprising clarity, perhaps sharpened by actual experience, that interstate extradition was a delicate matter; the constitutional provision is clear and so, indeed, is the extradition statute (Title 18 USC § 3182), which was originally enacted in 1793, and has remained basically the same until the present time.

The mandate of the Constitution is clear: Let each State decide for itself what acts shall be criminal and how it shall be determined; let every other State respect that decision. Full faith and credit has as much

meaning here as in any civil field of decision. As was said in

> Appleyard v. Massachusetts (1906) 203 U. S. 222,
> "A faithful, vigorous enforcement of that stipulation (the constitutional provision relating to extradition) is vital to the harmony and welfare of the State."

II.

The Court below was without jurisdiction to determine the question of alleged invasion of the Constitutional rights of appellee.

Faced with the insurmountable barriers of the Supreme Court decisions stringently confining the issues on an application for habeas corpus in extradition proceedings, appellee has attempted to overcome them by ignoring them. These decisions which limit the inquiry are not applicable, as appellee argues, when the fugitive sought to be extradited alleges that he has been denied due process by the demanding state. In short, appellee would change the character of the proceedings from an extradition matter to a hearing to determine the constitutionality of the fugitive's original conviction.

All the issues which a demanding state must gain to extradite a fugitive were admitted in the court below, but they were hardly deemed worthy of notice by that trial court. It was not extradition with which the court was concerned but due process, and the court, accepting appellee's view of the proceeding, tried not an extradition case but an application for habeas corpus under the Fourteenth Amendment.

The basis of jurisdiction in the proceeding in the court below is perhaps at the heart of the confusion surrounding the court's decision. It should be emphasized that the basis of the court's jurisdiction was not the Fourteenth Amendment nor the Eighth nor any part of the Constitution except Article IV, Section II, Clause II.

There were two basic obstacles to the acceptance by the court below of jurisdiction to try not only the issues constitutionally present on an extradition proceeding, but the due process provided by the judicial and penal system of Georgia as well:

(a) *The scope of inquiry on application for habeas corpus to combat extradition remains limited regardless of allegations of invasion of constitutional rights.*

Appellee's facile effort to cause the court to disregard the rule limiting the scope of hearing upon an application for habeas corpus to combat extradition on the ground that his constitutional rights had been invaded by the demanding state did not present a novel question. The very cases which have delimited the scope of such inquiry, in large part, involve similar allegations of invasion of constitutional rights. For example, see

Biddinger v. Commissioner of Police (supra);
Marbles v. Creecy (1909) 215 U. S. 63;
Whitten v. Tomlinson (supra).

The bare allegation that a constitutional right has been violated by the demanding state is not sufficient to enlarge the scope of the hearing. See Parker, Limiting the Abuse of Habeas Corpus (1948) 8 F.R.D. 171.

(b) *The State remedies available for the correction of invasion of constitutional rights have not been exhausted.*

The second obstacle to the acceptance of jurisdiction to try the constitutionality of Georgia's penal and judicial system was that the remedies provided by the State of Georgia for the correction of invasion of a prisoner's constitutional rights had not been exhausted.

Since the case of

Ex Parte Hawk (1944) 321 U. S. 114

and the subsequent codification of the rule therein (Title 28 U.S.C. § 2254), an applicant for habeas corpus detained under state process must exhaust the remedies available in the State courts before the Federal courts may assume jurisdiction, and this rule is applicable in habeas corpus to avoid extradition,

Dye vs. Johnson (1949) 338 U. S. 865

Appellee has made a token compliance with this requirement by purporting to exhaust the remedies available in the courts of California.

That is, he has sought to have the courts of California hear and determine the question of whether his trial, sentence, and imprisonment by Georgia was legal, proper, and constitutional.

There can be no question but that such a hearing and determination by California would be exactly such a proceeding as was specifically forbidden by the decision of the Supreme Court in

Kentucky v. Dennison (supra)

and the long line of forceful and controlling authorities reiterating that rule.

If the decision of the trial court be correct, then the evils which Chief Justice Taney foresaw and the Supreme Court forbade have nevertheless come full into being, and the rule of the Dennison case is discarded and forgotten, and with it the principle which Holmes saw as being "too clear for lengthy discussion."

Nor can it be argued that since California is barred by Supreme Court mandate from hearing appellee's charges, the requirement of Ex Parte Hawk (supra) is not applicable. Such a rule would make the doctrine of exhaustion of state remedies meaningless, for there are state remedies existent and they are available: They are the remedies provided by the State of Georgia.

Just as the Constitution and Supreme Court decisions have barred an asylum state from providing remedies designed to retry the conviction and detention of a prisoner, so have they required that the sentencing state provide such remedies, or have the Federal courts provide them in its stead

(White v. Ragen (1944) 324 U. S. 760).

Georgia has provided such remedies, and they are adequate. The Constitution of the State of Georgia of 1877, and the Constitution of the State of Georgia of 1945, prohibit cruel and unusual punishment, and provide that the writ of habeas corpus shall not be suspended. Constitution of the State of Georgia, Article I, Section I, Paragraphs IX and XI. The constitutional provision providing for habeas corpus has been implemented by statute. Georgia Code, Title 50, Section 101.

It must be pointed out that Section 2254 does con-

tain an excepting clause which provides that the Federal courts shall have jurisdiction if "there is either an absence of available state corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner." Respondent impliedly urged this exception upon the court, and the court apparently did in fact accept jurisdiction on this basis.

The allegation of fear of physical violence in similar circumstances is common, and when such tales of cruelty are related without contradiction there seems always to be an answering wave of compassion from judges perhaps more eager to protect the helpless than to question their own credulity. Some historic remnant of the ancient doctrine of "right of asylum" tends to reappear. This has been from time to time criticized

(Lascelles v. Georgia (1893) 148 U. S. 537).

The understandable propensity of fugitives for describing their prison confinement in crimson colors has been scientifically and judicially recognized and deprecated:

Johnson v. Matthews (1950) 182 F. 2d 677 at 683;
43 Harv. L. Rev. 617
1 Am. J. Police Sci. 575.

In Marbles v. Creecy (supra), on a comparable point, the Supreme Court said:

> "It is clear that the executive authority of a State in which an alleged fugitive may be found, and for whose arrest a demand is made in conformity with the Constitution and laws of the United States, need not be controlled in the discharge of his duty by considerations of race or color, nor by a mere

suggestion—certainly not one unsupported by proof, as was the case here—that the alleged fugitive will not be fairly and justly dealt with in the State to which it is sought to remove him nor be adequately protected, while in the custody of such State, against the action of lawless and bad men. The court that heard the application for discharge on writ of habeas corpus was entitled to assume, as no doubt the Governor of Missouri assumed, that the State demanding the arrest and delivery of the accused had no other object in view than to enforce its laws, and that it would, by its constituted tribunals, officers and representatives, see to it not only that he was legally tried, without any reference to his race, but would be adequately protected while in the State's custody against the illegal action of those who might interfere to prevent the regular and orderly administration of justice."

It is true that Georgia introduced no evidence to contradict the allegations and testimony of appellee concerning cruel treatment, Georgia having taken in the trial court the position here urged, that is, that such matters may not properly be considered by the Court in an extradition hearing, and there being a real question whether the return of a fugitive is monetarily worth the expense of transporting attorneys and witnesses some three thousand miles for each of the several proceedings.

The decision of the trial court would seem to question the efficacy of the protection to be provided a prisoner by the judiciary of Georgia. Such an assumption is improper, for as the Supreme Court said in

Wade v. Mayo (1946) 332 U. S. 672,

> "State courts are duty bound to give full effect to Federal constitutional rights, and it cannot be assumed that they will be derelict in their duty."

Further, it cannot be overlooked that the Federal courts also sit in Georgia, nor have those courts been derelict in their protection of the rights of the oppressed. In

> Johnson v. Matthews (1950) 182 F. 2d 677 at 681,

the United States Court of Appeals for the District of Columbia Circuit said:

> ". . . it seems not inappropriate for us to comment that reported cases show the United States Court of Appeals for the Fifth Circuit to be as zealous in protection of the constitutional rights of persons within its borders as is any other Court of Appeals. It was the United States District Court for the Middle District of Georgia which convicted and sentenced to the penitentiary one Screws, a sheriff, for beating a prisoner. The Fifth Circuit affirmed that conviction upon constitutional principles, the Supreme Court reversing on the ground that the statute required a specific intent to deprive a person of a federal right and that an unnecessary beating alone is not sufficient for conviction. It was the same District Court which awarded damages to a Negro voter against the officials of a party primary election for denying the voter the right to participate in a primary, the court holding such deprivation to be a violation of rights under the Fourteenth, Fifteenth and Seventeenth Amendments; and the Court of Appeals for the Fifth Circuit affirmed that judg-

> ment. It was the same Court of Appeals which, in Crews v. United States, affirming a conviction under the federal statute making criminal a deprivation of constitutional rights under color of law, condemned that statute as 'inadequate.' The list of cases could be expanded."

Thus, it will be seen that there is no harshness in the rule which so narrowly delimits the scope of inquiry in extradition proceedings, for no fugitive is deprived of any constitutional right, but for the sake of order and interstate relations, he is required to seek his redress for invasion of such rights in the State and Federal courts of the demanding state.

Apparently it was argued in the court below that if appellee were required to exhaust the remedies provided by Georgia, his case would become moot inasmuch as he would have to return to Georgia to make use of the remedies available there. The flaw in such an argument is that it postulates that appellee's case was directed against his extradition, when actually, as has been shown, it was directed against the legality of his original trial and sentence. He argues against extradition on due process grounds, but refuses to comply with the requirements for presenting a due process case to the Federal courts basing his refusal on extradition grounds. If returned, he may properly have his day in court for it is elementary that so long as a prisoner is detained under a sentence he may contest such detention by habeas corpus repeatedly and without any question of mootness arising.

III.

Effect of the findings of fact and conclusions of law made by the trial court.

The effect of the findings of fact and conclusions of law made by the trial court would constitute, if allowed to stand, a legal precedent for freeing any fugitive from the prisons of Georgia, or for that matter, the prisons of any state, for it can hardly be questioned that the chaotic effect of the decision of the court below, if allowed to stand, may spread to other states. In

Johnson v. Matthews (supra),

the court said, in referring to the effect of such a decision,

> "The chaos into which the enforcement of criminal law would be plunged by the doctrine urged upon us by appellant is as readily discernible now as it was when the Colonies first made what is now the existing agreement. The case before us concerns Georgia. The next might concern Alabama. The question there might be whether casually attended, ununiformed laborers with chains attached to their legs, at work in the open air on country roads, are undergoing cruel and unusual punishment. The next case might concern New York or Illinois, and the question might be whether serried, shaved and numbered robots in the monotony of gray walls, or in occasional solitary confinement in darkened cells on bread and water, are suffering cruel and unusual punishment. And so a pattern of opinion in this jurisdiction concerning the penal practices of all the forty-eight states would in time necessarily develop."

IV

The United States Court of Appeals for the First Circuit, in

Lyon v. Harkness, 151 F. 2d 731,
and the United States Court of Appeals for the District of Columbia Circuit, in

Johnson v. Matthews (supra)
have entered decisions in direct conflict with the decision of the court below.

The decision of the United States Court of Appeals for the Third Circuit in

Johnson v. Dye, 175 F. 2d 250,
upon which much of the District Court's decision in the instant case was based, has, of course, been reversed by the United States Supreme Court,

Dye v. Johnson (1949), 338 U. S. 865,
by memorandum decision making reference to Ex Parte Hawk (supra).

It is the residual question left by the Supreme Court in the Dye case which is the subject of this litigation.

CONCLUSION

As Georgia views this case, the court below erred in considering matters extrinsic to the narrow scope of permitted inquiry. The excursion attempted by the court beyond these narrow walls being unauthorized, all such extramural findings and rulings are worthless.

The court below was without jurisdiction to hear an application for habeas corpus based on the Fourteenth Amendment until remedies available in the State courts had been exhausted, and remedies provided by the State courts of California were not available to appellee under the doctrine of limited scope of inquiry on extradition proceedings. The State of Georgia provides adequate remedies for redress of violations of constitutional rights, and the remedies provided by the State have not been exhausted.

Respectfully submitted,

EUGENE COOK, Attorney General of Georgia.

M. H. BLACKSHEAR, JR., Deputy Assistant Attornew General of Georgia.

LAMAR W. SIZEMORE, Assistant Attorney General of Georgia

EDWARD E. DORSEY, Of Counsel.

APPENDIX

Constitution of the United States:

Art. IV, Section 2, Clause 2:

Fugitives from justice. A Person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

Title 28, *United States Code, Section* 2254:

"An application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State, or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

"An applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented."

Constitution of the State of Georgia of 1877 *and Constitution of the State of Georgia of* 1945, *Art.* 1, *Sec.* 1, *Pars.* 9 *and* 11.

"*Paragraph IX. Bail; fines; punishment; arrest, abuse of prisoners.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; nor shall any person be abused in being arrested, while under arrest, or in prison."

"*Paragraph XI. Habeas corpus.* The writ of Habeas Corpus shall not be suspended."

Georgia Code Ann., Title 50, *Sec.* 50-101.

"Any person restrained of his liberty under any pretext whatever, or any person alleging that another, in whom for any cause he is interested, is restrained of his liberty or kept illegally from the custody of the applicant, may sue out a writ of habeas corpus to inquire into the legality of such restraint."